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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 1055

G. F. HOWARD, PETITIONER,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

G. F. HOWARD, *Petitioner.*

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Petition for Writ of Certiorari.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

To the Honorable the Supreme Court of the United States:

The petition of G. F. Howard respectfully prays for a Writ of Certiorari to the Supreme Court to review the decision of the Circuit Court of Appeals for the Eighth Circuit, rendered January 8, 1945 — rehearing denied February 8, 1945 — Stay of mandate February 16 to March 16, 1945.

The opinion sought to be reviewed is G. F. Howard v. Chicago, Burlington & Quincy Railroad Company, a corporation, in the Record, pages 1 to 58.

The Court has jurisdiction to review said decision under Section 240 of the Judicial Code, Section 347a.

Statute involved Railway Labor Act of 1926, as Amended June 21, 1934; 45 U. S. C. A., Section 151 et seq.; 48 Stat. 1185; The Johnson Act of May 14, 1934, 48 Stat. 775; Statutory Definition—Original Jurisdiction—of District Courts of the United States, 28 U. S. Code, Section 41(8), being Section 24(8) of the Judicial Code, 28 U. S. C. A., Section 41(8).

Railroad Retirement Act of August 29, 1935, C. 812, 49 Stat. 967, as amended June 21, 1937, C. 382, part 1, Section 1, 50 Stat. 307, 45 U. S. C. A., Section 228a et seq., Art. 1, Section 8, Cl. 3, Art. VI, Art. 1, Section 10, Fifth and Seventh Amendments.

The cause has arisen due to a violation of the Railway Labor Act of 1926 by the defendant's refusal to set up a board to settle labor disputes as provided by Section 3 of the Act, R. 6, par. 12. See Order R. Telegraphers v. Railway E. Agency, 320 U. S. ——, 64 S. Ct. 586, par. 4. We hold that the failure of the carrier to proceed as provided by the Railway Labor Act of 1926, then applicable, left the collective agreement in force, and at page 583, par. 9, the theory of statute of limitation is that, even when one has a just claim, it is unjust not to put the adversary on notice to defend within limitation period, and that right to be free of stale claims if time comes to prevail over right to prosecute them. R. 5, R. 7, par. 8-12-14.

And R. 3, par, 3, The Order of Railroad Telegraphers is a dominated union. See 308 U. S. ——, 60 S. Ct. 208, par. 6, 7, i. e. (N. L. R. B. v. Newport News & D. D. Co., 308 U. S. ——, 60 S. Ct. 208.)

The law provides that an employe organization shall be free from interference by the employer. Section 1, Railway Labor Act, subd. Sections 1, 6, Section 2, subd. 2, 3, 4, 6, 7, 9, 45 U. S. C. A., Sections 151 and 152. Steele v. Louisville R. Co., 323 U. S. ——, 65 S. Ct. 226, par. 15. The right of a member of a craft or class not to be discriminated against

by a bargaining representative chosen under the Railway Labor Act is a federal right implied from the act of the policy which it has adopted. See R. 6, par. 12, 13a.

Questions Presented.

1. R. 48, Fol. 49—Case handled and decided by lower courts under the common, or State Law, non-federal ground. Should their judgments be reversed? R. 2, par. 1.

2. R. 6(10), 19(10), 24(2), R. 20, 21, Exhibit E. Should the judgment of the District Court of the Seventeenth Judicial District of the State of Kansas, County of Decatur, be set aside and held for naught?

Reasons Relied on for Allowance for Writ of Certiorari.

1. The amendment of the Railway Labor Act, June 21, 1934, and the Johnson Act, 48 Stat., Section 775 (1934), deprived the District Court of Decatur County (Seventeenth Judicial District), of jurisdiction of the subject matter, and the case was not tried by consent. The court took jurisdiction on the grounds that the case was filed January 25, 1934, about five months before the Act was amended.

2. Plaintiff was deprived of his constitutional rights under Art. VI., i. e. This Constitution, and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

Under Chicott C. C. D. D. v. Baxter S. Bank, 308 U. S. ——, 60 S. Ct. 320, par. 3. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous, and may, upon appeal, be reversed for that cause. Id. 10 Wheat., p. 199, 6 L. Ed. 300. The above case evidently was tried under state law, without amending the pleadings, R. 2, par. 1.

That a State court before which a proceeding is completely initiated may, by operation of supreme Federal law, lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our Federal

system. See Moore v. Dempsey, 261 U. S. 86, 43 S. Ct. 265, 67 L. Ed. 543. Cf. Johnson v. Zerbst, 304 U. S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461.

Wherefore your petitioner prays that a writ of certiorari may be issued by this court.

G. F. Howard, Petitioner,
G. F. Howard, Appellant.

Oberlin, Kans., March 10, 1945.